



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/172073

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 10, 2016, at Janesville, Wisconsin. This record was held open to allow petitioner to provide additional documentation, which he did. Petitioner's documentation was marked as Exhibit 3.

The issue for determination is whether petitioner is liable for an overpayment of FS benefits, and whether the respondent correctly seeks to pursue a tax intercept to collect the overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.

2. Petitioner was included in his stepmother's open and ongoing FS assistance group. Petitioner has never been a member of this assistance group.
3. The respondent established an overpayment involving petitioner's stepmother in 2011, identified as claim nos. [REDACTED], [REDACTED] and [REDACTED]. See, Exhibit 2. Petitioner never received notice of this overpayment. Petitioner never resided with his father and stepmother, only visited his father once per month, and has never filed for FS assistance. Petitioner learned of the overpayment when his taxes were intercepted.
4. Petitioner resided at [REDACTED] at all times material hereto. See, Exhibit 3.
5. The respondent sent a tax intercept notice to petitioner using the job center address. See, Exhibit 2. The record does not explain why this address was utilized by the respondent.
6. There is no evidence that a tax intercept notice, nor any dunning notices, were ever sent to petitioner at his correct address (which is not that of his father and stepmother).

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

With regard to the underlying overpayment, I find that petitioner is not liable. (4) The following are responsible for paying a claim: (i) Each person who was an adult member of the household when the overpayment or trafficking occurred... 7 CFR § 273.18(a). While all FS overpayments must be recovered, regardless of fault, petitioner was not a member of his stepmother's FS assistance group at any time. The respondent does not contest this, and noted at hearing that a note in the file indicated that an investigator reported that petitioner was residing with his father and stepmother in 2010. Petitioner credibly testified that he has always resided at his present address, and he has never resided with his father and stepmother. In fact, he only visited his father once per month since his father moved back to Wisconsin in 2009. Petitioner did not apply for FS assistance, and did not benefit from any of the FS allotted to his stepmother's assistance group.

As such, for purposes of this decision and strictly based on the facts relevant hereto, I conclude that petitioner was not a member of his stepmother's FS household during the overpayment periods indicated above, and therefore is not liable for the overpayments identified as claim nos. [REDACTED], [REDACTED] and [REDACTED].

With regard to the tax intercept, petitioner's tax refund was intercepted by the respondent, and those funds were applied to the outstanding overpayment balance. This was done in error. The respondent is required to notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 49.85(3).

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have **received** three or more dunning notices. FoodShare Handbook § 7.3.2.10 (emphasis added). Petitioner received no overpayment notices, nor any dunning notices. In fact, petitioner did not learn of the overpayment or tax intercept until his taxes were actually intercepted. As noted above, petitioner is not liable for this overpayment, and therefore a tax intercept action here is inappropriate. I further note that the tax intercept notice was sent to the job center address, and the record provides no indication as to why it was sent there. Perhaps this address was utilized because petitioner has never filed for public assistance benefits. In any event, petitioner has established that he was never a member of his stepmother's assistance group, that he is not liable for the overpayment, and that he should not be subject to a tax intercept to recoup the overpayment.

CONCLUSIONS OF LAW

1. Petitioner is not liable for the identified FS overpayments, as he was not a recipient of the overpaid FS benefits, nor was he a member of the FS household that was overpaid.
2. The respondent incorrectly intercepted petitioner's tax refund, as petitioner is not liable for overpayment claim nos. [REDACTED], [REDACTED] and [REDACTED].

THEREFORE, it is

ORDERED

That the matter be remanded to the respondent with instructions to rescind the petitioner's liability for overpayment claim nos. [REDACTED], [REDACTED] and [REDACTED]. The respondent shall also rescind the tax intercept and refund any and all funds intercepted from petitioner's tax refund. The agency shall take these actions within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of April, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 6, 2016.

Rock County Department of Social Services
Public Assistance Collection Unit